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State v. Masner Appellant's Brief Dckt. 43788

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43788
)	
v.)	ADA COUNTY NO. CR 2011-9243
)	
DAVID MATHEW MASNER,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

David Mathew Masner appeals from the district court's order denying his motion to terminate or modify probation. He contends the district court abused its discretion in denying that motion.

Statement of Facts and Course of Proceedings

Following his guilty plea, Mr. Masner was convicted of operating a motor vehicle while under the influence of alcohol ("DUI"), having two or more DUI convictions within ten years, and carrying a concealed weapon while under the influence of alcohol. (R., pp.43-44.) The district court sentenced Mr. Masner to a unified term of ten years,

with three years fixed, for the DUI, and 90 days in Ada County Jail for carrying a concealed weapon, to be served concurrently. (R., pp.44-45.) The district court retained jurisdiction. (R., p.42.) The judgment was entered on September 16, 2011. (R., pp.43-48.) On February 1, 2012, the district court imposed the underlying sentence, and then suspended that sentence and placed Mr. Masner on probation for a period of ten years. (R., pp.53-54, 56-60.)

On May 20, 2014, Mr. Masner filed a motion to convert his supervised probation to unsupervised probation. (R., pp.70-71.) Mr. Masner attached as an exhibit his probation notes from February 1, 2012 to May 12, 2014. (R., pp.72-121.) The district court held a hearing on June 11, 2012, and counsel for Mr. Masner withdrew the motion at the hearing. (R., p.124.)

On February 17, 2015, Mr. Masner filed a second motion to convert his supervised probation to unsupervised probation. (R., pp.134-35.) The State filed an objection to Mr. Masner's motion. (R., pp.137-39.) Following a hearing, the district court denied the motion. (R., p.140.)

On November 5, 2015, Mr. Masner filed a motion to terminate or modify probation, requesting that the district court "terminate his probation or, in the alternative, convert his probation to unsupervised or eliminate the drug court urinalysis requirement." (R., pp.143-44.) The district court held a hearing on Mr. Masner's motion, and considered a letter from Mr. Masner's parents, dated November 23, 2015.¹ The district court entered a written order denying Mr. Masner's motion on November 30,

¹ The Clerk's Record does not contain a copy of the letter from Mr. Masner's parents to the district court. Simultaneously with the filing of this Brief, Mr. Masner is filing a Motion to Augment to include a copy of this letter in the Record.

2015. (R., pp.147-49.) Mr. Masner filed a timely notice of appeal on December 8, 2015. (R., pp.150-52, 155-58.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Masner's motion to terminate or modify probation?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Masner's Motion To Terminate Or Modify Probation

"The goal of probation is to foster the probationer's rehabilitation while protecting public safety." *State v. Cheatham*, No. 43263, 2016 WL 516227, at *1 (Idaho Ct. App. Feb. 10, 2016) (citations omitted). A trial court is authorized by statute to make probation subject to "such terms and conditions as it deems necessary and appropriate." I.C. § 19-2601(2). "Although trial courts have broad discretion in the imposition of restrictive terms, the conditions of probation must be reasonably related to the rehabilitative and public safety goals of probation." *Cheatham*, 2016 WL 516227, at *1 (citations omitted). Here, the district court abused its discretion when it denied Mr. Masner's motion to terminate or modify probation because the conditions of Mr. Masner's probation—specifically, the fact that it is supervised and the urinalysis requirement—are not reasonably related to the purpose of rehabilitation, and in fact hinder Mr. Masner's efforts at rehabilitation.

Mr. Masner requested that the district court terminate his probation so that he could attend a gunsmithing academy in Prescott, Arizona. (Tr., p.7, Ls.20-22, p.17, Ls.1-2, p.18, Ls.16-25.) Mr. Masner is a graduate of Boise High School and attended

three years of college at the University of San Diego. (Presentence Investigation Report (“PSI”), pp.8, 81, 87.) He originally wanted to teach English or Spanish, but was concerned that he might not be able to teach because of his criminal history, and thus decided to pursue a career in machining. (Tr., p.16, Ls.10-22.) Mr. Masner has the full support of his parents, who are willing to pay for Mr. Masner’s education, and who attended the hearing on his motion to terminate or modify probation. (Tr., p.6, L.19 - p.7, L.2; Motion to Augment, Ex. A.)

The district court recognized that “[h]aving access to firearms while you’re on probation would certainly be a violation.” (Tr., p.18, Ls.24-25.) However, without even mentioning the rehabilitative goal of probation, the district court denied Mr. Masner’s request to attend gunsmithing academy. The district court said, “And honestly, I don’t want you around guns. I don’t want you smithing guns. I don’t want you testing guns. I don’t want you shooting guns or possessing guns. I don’t have any confidence in your ability to judiciously handle them at this point.” (Tr., p.21, L.25 – p.22, L.5.) This was an abuse of discretion.

Mr. Masner also requested that his probation be terminated because it caused him a great deal of anxiety. He explained to the district court that he was “afraid to go out of the house” because it seemed like he had “an X painted on [his] back.” (Tr., p.18, Ls.2-5.) Mr. Masner’s parents informed the district court that their son had been diagnosed with chronic depression and generalized anxiety disorder, and the district court was aware that Mr. Masner had previously participated in—and successfully completed—mental health court. (Motion to Augment, Ex. A; Tr., p.7, Ls.3-10.) However, in denying Mr. Masner’s motion to terminate probation, the district court did

not specifically discuss the interplay between Mr. Masner's mental illness and his probation. The district court recognized, in passing, that probation was "a burden" and "a pain in the neck," but did not appear to appreciate the severity of the anxiety that probation causes Mr. Masner. Terminating Mr. Masner's probation would clearly have furthered Mr. Masner's efforts at rehabilitation, and the district court abused its discretion in failing to grant this relief.

As an alternative to terminating his probation, Mr. Masner requested that the district court modify his probation from supervised to unsupervised and/or remove the requirement that he submit to random urinalysis testing. (R., pp.54, 55.) Mr. Masner explained to the district court that the urinalysis testing presented a significant financial burden. (Tr., p.15, Ls.17-22.) Mr. Masner had been called for urinalysis 186 times at a cost of \$3,348.00, plus the cost of transportation. (Motion to Augment, Ex. A.) Moreover, the mandated urinalysis testing is redundant because Mr. Masner is already subject to random urinalysis testing as part of the treatment he receives from the Center for Behavioral Health. (PSI, p.168; Motion to Augment, Ex. A.) And, as Mr. Masner explained to the district court, he has anxiety surrounding the urinalysis testing, which stems from his mental illness. (Tr., p.7, L.25 – p.8, L.6.)

If the district court believed that probation continued to be necessary, it should have modified Mr. Masner's probation to be unsupervised and/or removed the urinalysis testing requirement. The district court abused its discretion when it failed to grant this relief. In denying Mr. Masner's motion, the district court informed Mr. Masner that "contrary to what you told me, I think that there are victims." (Tr., p.22, Ls.15-16.) The record does not support the district court's statement that there were any direct victims

of Mr. Masner's crime. Mr. Masner was arrested for DUI while parked at a gas station in Boise. (PSI, p.2.) The PSI reflects that the only victim of Mr. Masner's offense was the State of Idaho. (PSI, p.2.) Considering this, and for all the reasons discussed above, the district court abused its discretion in denying Mr. Masner's motion.

CONCLUSION

Mr. Masner requests that this Court vacate the district court's order denying his motion to terminate or modify probation, and remand to the district court with instructions to terminate Mr. Masner's probation or, in the alternative, to convert his probation from supervised to unsupervised and/or eliminate the urinalysis requirement.

DATED this 30th day of March, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of March, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DAVID MATHEW MASNER
3323 N LAKEVIEW LN APT #202
BOISE ID 83703

MICHAEL REARDON
DISTRICT COURT JUDGE
E-MAILED BRIEF

LANCE L FUISTING
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas